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FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

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In the Matter of	EDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY
Amendment of Section 73 202(b) Table of Allotments, FM Broadcast Stations (Lancaster and Pickerington, Ohio)) MB Docket No 03-238) RM-10820)

To Assistant Chief, Audio Division, Media Bureau

REPLY COMMENTS OF FRANKLIN COMMUNICATIONS, INC.

Franklin Communications, Inc. ("Franklin"), licensee of Station WJZA,
Channel 278A, Lancaster. Ohio, herein files its reply comments on the *Nouce of Proposed Rule Making*, DA 03-3648, released November 17, 2003 ("NPRM") that
proposes to (a) reallot Channel 278A from Lancaster, Ohio, to Pickerington. Ohio and (b)
modify the WJZA license to specify operation on Channel 278A at Pickerington, Ohio

A defective minor change application filed by the licensee of WEGE, Westerville, Ohio,
was filed prior to the comment date in this proceeding, so it must be dismissed. In
support of Franklin's proposal, the following is shown

WEGE's Defective Minor Change Application Must Be Returned Without Consideration

The only comments filed in this docket by the comment deadline were those of Franklin supporting the changes proposed in the NPRM. However, prior to the comment deadline, on January 8, 2004, North American Broadcasting Co., Inc. ("NABC") filed an application (File No. BPH-20040108ALM) (herein "Application") seeking a minor

Reply Comments are due by January 30, 2004; therefore, these Reply Comments are

change construction permit for WEGE(FM), Channel 280A, at Westerville, OH Exhibit 24 – Statement A – of the Application references the Pickerington rule making and states that the Application "would be fully spaced to the Pickerington allotment if the allotment coordinates were changed to 39° 55' 42" N, 82° 38' 42" W " The Application is currently short spaced to the Pickerington allotment site at 39° 56' 39" NL, 82° 41'14" WL by 3 49 kilometers. If the Application were in compliance with the Commission's rules, it would be treated as a counterproposal to Franklin's proposal for Pickerington under the procedures set forth in *Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments*, 7 FCC Rcd 4917 (1992), recongranted in part, 8 FCC Rcd 4743 (1993). But the Application is defective and may not be considered as a valid counterproposal to the Pickerington proposal.²

Any alleged public interest benefits in the Application are nullified by the application's non-compliance with the Commission's rules, and defects in the Application under Commission precedent. The Application is short spaced by 13 kilometers to the licensed facilities of WPAY-FM, Channel 281C, at Portsmouth, OH Although NABC requested a waiver in the Application of Sections 73 207(b) and 73 3517, the plain fact is that the Application does not meet the Commission's spacing rules. It is well established that counterproposals must be technically correct and substantially complete when filed and that counterproposals will be considered only if they are filed by the deadline date for comments. See Section 1 420 (d) of the Commission's Rules, *Broken Arrow and Bixby, Oklahoma*, 3 FCC Rcd 6507 (1988) and

timely filed

² Separately, Franklin is filing today an informal objection to the Application. On January 23, 2004, the licensee of WPAY-FM filed a Motion to Dismiss the Application

Springdale Arkansas et al., 4 FCC Rcd 674 (1989), recon., 5 FCC Rcd 1241 (1990). In this case, what NABC would normally proffer as a counterproposal in this docket was not technically correct or substantially complete when filed

In Oswego and Granby, New York, 16 FCC Red 16927 (2001), reconsistant as moot, 18 FCC Red 17615 (2003), on remarkably similar facts, the Commission granted a proposal to reallot a channel from Oswego to Granby, New York, and modify the license of WTKV(FM), as it would provide a first local service to Granby under priority (3), while returning as unacceptable for filing the defective application of Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), to make a minor change to the facilities of WWDG(FM)³, DeRuyter, New York.⁴ The Commission returned the application and afforded Clear Channel 30 days to amend the application in such a manner that it would not be mutually exclusive with the allotment of the channel to Granby

WEGE's Application must be returned as unacceptable for filing or dismissed as defective. It should not be listed on a public notice as a counterproposal since it is defective.

Franklin's Pickerington Proposal Is Superior to NABC's Application

In addition to the fatal defect described above, the Application must be found inferior to Franklin's proposal under the Commission's FM allotment priorities set forth

³ Formerly WXBB

⁴ The Commission allotted the channel to Granby at different coordinates at the suggestion of the licensee of WTVK. Franklin objects to the coordinates suggested by NABC. Franklin' consultant searched for a transmitter site for WEGE that would permit WEGE some population increase without severely restricting the reference coordinates.

in Revision of FM Assignment and Policies and Procedures, 90 FCC 2d 88 (1982) 5 Under the Commission's priorities, there is no question that Franklin's proposal is comparatively superior to NABC's Franklin proposes a first local transmission service to Pickerington, serving Priority (3), while NABC proposes only an increase in service area – a factor which is considered an "other public interest" matter under priority (4) Provision of first local service is comparatively preferable under Section 307(b) of the Communications of Act of 1934, as amended to a modification application. In FM Channel and Class Modifications by Application, 8 FCC Red 4735 (1993), the Commission stated, "an application is considered, in the absence of a showing to the contrary, to represent no more than the applicant's preference for a particular transmitter site. Accommodation of an applicant's preference provides minimal public interest benefits, and thus virtually any conflicting application involving a net public interest benefit will be preferred." The Commission should grant Franklin's proposal for a first local service to Pickerington without considering whether the Application will result in any public interest benefits

Franklin's proposal would provide a first local service to Pickerington, an incorporated community of 9,792 persons. Franklin's petition complies fully with all of the spacing rules and provides line of sight service and principle community coverage to Pickerington. Franklin's proposal would also result in a net service gain of 327,050.

for WJZA at Pickerington and could find no satisfactory compromise location (1) First full-time aural service, (2) second full-time aural service, (3) first local service, and (4) other public interest matters

persons⁶, and the small loss area of 611 square kilometers is well served by at least five full-time services. It is clear that Franklin's proposal is superior

The attached Technical Exhibit shows that acceptance of the Application would require the Pickerington allotment reference site to be relocated 4.01 kilometers east of Franklin's current allotment site, resulting in a loss of population by WJZA of 182,765 persons (using the 30 second database) if NABC's site were specified in lieu of the reference site in the NPRM WEGE is licensed to Westerville. Ohio It has an obligation to serve that community, and currently does so with its facilities NABC's attempt to move south merely improves WEGE's service to Columbus, Ohio, not to Westerville. In fact, WEGE proposes to move its transmitter site 7.96 km south of its current location. The Technical Statement contains a map showing the dramatic change in the 70 dBu contour of WEGE as it moves south to cover more of Columbus. Additionally, the WEGE relocation would result in the loss of service to 19,544 persons.

The Technical Statement shows that the licensed 60 dBu contour of WEGE now covers 52 percent of the Columbus Urbanized Area. The proposed 60 dBu contour would encompass almost 100 percent of the Urbanized Area. NABC's Application would bring increased service only to areas that are already well-served. Only NABC's

⁶ FCC Figures—There was a difference between the population figures as determined by the Commission and by the prior licensee of WJZA—The Commission calculated the present service at 441,943 persons and the proposed service at 768,993 for a net gain of 327,050 or a net gain of 47,000 more persons than the figures in the petition for rule making—The technical consultant stated he double checked his figures and then changed the terrain data to predict the 60 dBu contour using the 3 second database—When using that database, the figures changed slightly to a present population of 479,563 and the proposed population of 760,210 within the 60 dBu contour—This results in a net gain of 280,647 persons—The technical consultant could not explain the difference in the figures, however, there is a large population gain from Franklin's proposal

private interest in serving more of Columbus than it does now would be benefit—not the public's interest

WEGE's suggestion of new reference coordinates for WJZA at Pickerington would result in a site restriction to WEGE's proposed site. It is the Commission's policy to allot channels with the least site restrictions possible in order to provide greater flexibility in selecting transmitter sites. See *Vacaville and Middleton, California*, 4 FCC Rcd 8315 (1989), recon. denied, 6 FCC Rcd 143 (1991).

In Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments. 7 FCC Red 4917 (1992), reconsideration order, 8 FCC Red 4745 (1993), at note 12, the Commission announced its policy where "the staff will also attempt to resolve conflicts between a rulemaking petition and a later-filed FM application," whenever it is possible to do so without prejudice to a timely filed FM application or rulemaking petition [emphasis added]." Here, Franklin has tried to find an alternate site that would resolve the conflict and not prejudice Franklin. Unfortunately, Franklin has been unable to do so. It appears that NABC selected a site for WEGE that makes its impossible to find a compromise site. As noted above, accepting NABC's alternate site would result in a loss of 182.765 persons in population that could be served by WJZA with its transmitter at the proposed reference site. That would create extreme prejudice to Franklin, so Franklin's reference site set forth in the NPRM should be established as the reference site for Channel 278A at Pickerington, Ohio.⁷

⁷39° 56' 39" NL, 82° 41'14"WL

Conclusion

Franklin's proposal for first local service to the incorporated city of Pickerington at the reference coordinates specified in the NPRM is comparatively superior to NABC's Application to merely increase WEGE's population coverage and move farther into Columbus, Ohio—But NABC's Application is not entitled to comparative evaluation because the Application is defective as it short-spaces the licensed facilities of WPAY-FM—NABC's Application should be returned as unacceptable for filing without any consideration in this Docket—There being no other impediment to the grant of Franklin's proposal, Channel 278A should be expeditiously allotted to Pickerington, OH, at the reference coordinates requested by Franklin, i.e. 39° 56' 39" NL, 82° 41', 14"WL

FRANKLEN COMMUNICATIONS, INC

By

Gary S Smithwick

Its Counsel

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January 30, 2004

Technical Statement

This Technical Statement is in support of the Reply Comments of Franklin

Communications, Inc. ("Franklin") on the Notice of Proposed Rule Making, DA 03-3648 that

proposes to re-allot Channel 278A from Lancaster, Ohio to Pickerington, Ohio and modify the

WJZA license for operation on Channel 278A at Pickerington, Ohio

North American Broadcasting Co , Inc ("NABC"), licensee of WEGE (FM), Channel 280A at Westerville, Ohio filed a minor change application (File Number BPH-20040108ALM). The application coordinates are short spaced to the Pickerington rule making allotment site by 3.49 kilometers. NABC states in the Application that the Application "would be fully spaced to the Pickerington allotment if the allotment coordinates were changed to 39° 55' 42" N, 82° 38' 42" W."

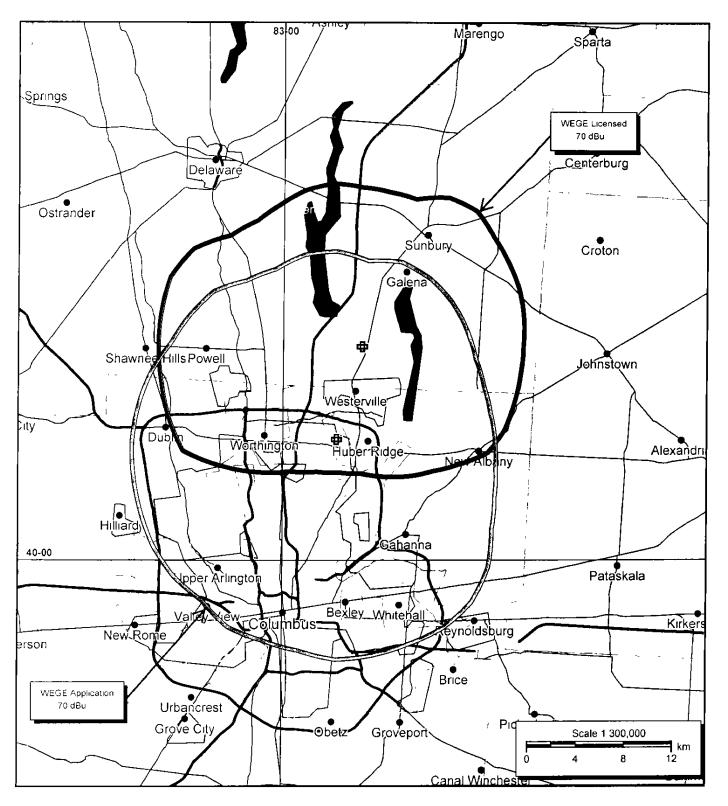
Franklin's rule making allotment site complies with the spacing rules of §73 207 and provides line of sight and principal community coverage of Pickerington NABC proposes to move the Pickerington rule making allotment site 4 01 kilometers east, therefore resulting in a loss of service to 182,765 persons ¹ The purpose of NABC's application to move WEGE 7 96 kilometers south is to provide greater service to Columbus, Ohio

Using a Polar Planimeter, we determined that the licensed 60 dBu contour of the WEGE facility covers 52% of the Columbus, Ohio Urbanized Area. The 60 dBu contour of the WEGE application covers more than 99% of the Columbus, Ohio Urbanized Area.

William G. Brown
Bromo Communications, Inc

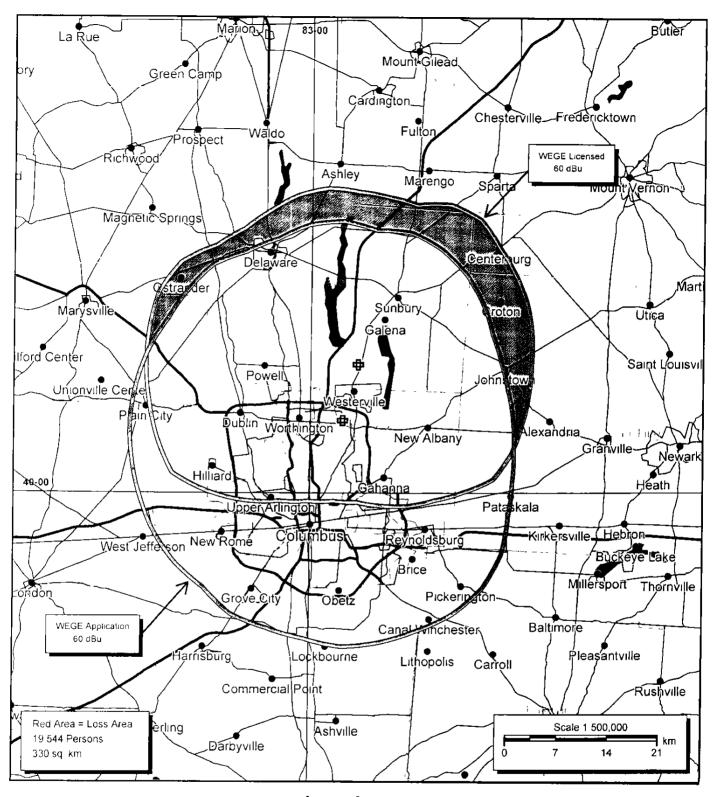
January 30, 2004

The loss in population figures are based on the Pickerington allocation site 60 dBu population as 744 424 and the 60 dBu population from the site proposed by NABC as 561,659



70 dBu Contour Comparison WEGE (FM) - Licensed Facility WEGE (FM) - Application Facility Westerville, Ohio

Bromo Communications, Inc. Atlanta, Georgia January 2004



Loss Area
WEGE (FM) - Licensed Facility
WEGE (FM) - Application Facility
Westerville, Ohio

Bromo Communications, Inc. Atlanta, Georgia January 2004

CERTIFICATE OF SERVICE

l, Sherry L. Schunemann, hereby certify that copies of the foregoing Reply Comments were this 30th day of January, 2004, sent via First Class Mail, postage prepaid (or by hand delivery, if so indicated), to the following:

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